

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-07/08-333
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying his request for a Select Comfort Series 3000 queen size bed. The issue is whether the petitioner has demonstrated that the above bed is medically necessary under the criteria of M108.

A hearing was commenced on September 11, 2008 to allow for additional review by OVHA and reconvened on November 13, 2008. The record was subsequently kept open for additional information from petitioner including studies from the manufacturer; this information was not forthcoming. The decision is based on the evidence adduced through hearing.

FINDINGS OF FACT

1. The petitioner is a forty-four-year-old man who is disabled. On or about May 15, 1999, petitioner was in a serious motor vehicle accident and sustained major injuries including fractures to his spine, clavicle, ribs, and a punctured lung. As a result of these injuries, petitioner

suffers chronic pain of his back and chest. Petitioner's pain has been managed primarily through the use of opiates. He presently takes methadone and neurotonin.

2. The petitioner has been under the care of Dr. R.L. since August 1999.

3. During December 2007, petitioner visited friends for several weeks. He slept on an air chamber bed and noted a great improvement in the quality of his sleep, diminished pain, and more energy. He put together a pain diary for the period of December 15, 2007 through January 9, 2008. During that time, he was able to decrease his pain medications. Upon his return home, his pain went back to prior levels.

4. Petitioner does not have the financial means to purchase this type of bed. Petitioner believes that if he were able to use this type of bed, his pain would be significantly reduced allowing him to lower or eliminate the use of opiates and to allow him to work again. Petitioner estimates the cost of the bed as \$1,200.

5. Petitioner requested Dr. R.L. to submit a request for assistance through the state. On March 14, 2008, Dr. R.L. wrote that petitioner would benefit from an air chamber bed because it would lessen petitioner's pain and "hopefully reduce or potentially eliminate" narcotic medication. On May

21, 2008, D. R.L. submitted a M108 request on behalf of petitioner for a Select Comfort Series 3000 queen bed including a letter from petitioner.

6. OVHA sought additional information from Dr. R.L. When OVHA did not receive the additional information, they issued a denial on July 17, 2008. In its decision, OVHA concluded that petitioner did not show extenuating circumstances that were unique to his situation so that a denial would be detrimental to his health. OVHA noted that Medicaid can cover pain management and can cover durable medical equipment such as hospital beds if criteria are met.

7. OVHA reviewed additional documentation from Dr. R.L. including an August 14, 2008 letter and e-mail responses to OVHA on October 3, 2008. The material did not address the question of whether there would be detrimental harm to petitioner if the request were not granted nor answered how his situation was unique under the M108 criteria. In addition, OVHA attempted to obtain information from Dr. A.M. who was identified by petitioner in September 2008 as a new treating source. Dr. A.M. stated "no comment" to OVHA's request for information.

ORDER

OVHA's decision is affirmed.

REASONS

Petitioner requests a service that is not included under the Medicaid regulations. However, OVHA has a procedure for requesting exceptions in these cases provided the petitioner submit information and documentation that meet the criteria in M108.

OVHA must review petitioner's information and documentation in relation to the following criteria:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about the efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service solely based on its cost.
6. Is the service or item experimental or investigational?

7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within OVHA's discretion and will not be overturned unless OVHA has abused its discretion by either failing to consider and address all the pertinent medical evidence under each criterion set forth above or by reaching a decision that cannot be reasonably supported by the evidence. Fair Hearing Nos. 20,275; 21,166.

M108 cases need well-documented medical information explaining what particular serious medical harm will befall an individual if the request is not granted. In petitioner's case, the evidence points to a possible amelioration of petitioner's symptoms if the request is granted. The evidence does not support specific serious detrimental harm specific to the petitioner. Based on the evidence in this case, one cannot say that OVHA abused its discretion.

Accordingly, OVHA's decision is affirmed. 3 V.S.A. §
3091(d), Fair Hearing Rule No. 1000.4(D).

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